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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1946

No. 23

TAZE HAMRICK GIBSON, *Petitioner*

v.

THE UNITED STATES OF AMERICA, *Respondent*

ON WRIT OF CERTIORARI
TO UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Petitioner's
REPLY BRIEF
on reargument

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INDEX

CITATIONS

Cases

	PAGE
Benesch v. Underwood 132 F. 2d 430 (CCA-6)	15
Dodez v. United States	
No. 86 Oct. Term 1946 (certiorari granted May 6, 1946, 66 S. Ct. 1017)	4, 17, 19
Brief for the United States, pp. 16-17	18-19
Estep v. United States	
327 U. S. 114-125	1, 2, 4, 10
No. 292 Oct. Term 1945, Joint Brief for Petitioners:	
pp. 73-74	7
pp. 131-190	11
pp. 190-194	10
Falbo v. United States	
320 U. S. 549	2, 3
Smith v. United States	
148 F. 2d 288	10
327 U. S. 114-125	1, 4, 10
No. 66 Oct. Term 1945, Joint Brief for Petitioners:	
pp. 73-74	7
pp. 131-190	11
pp. 190-194	10
Brief for the United States, *passim*	10
United States ex rel. Hull v. Stalter	
151 F. 2d 633 (CCA-7)	14
Yakus v. United States	
321 U. S. 414	9

Miscellaneous

Hershey, General L. B., National Director, Selective Service System, Letter of July 7, 1943	15
Opinion No. 14 as amended Nov. 2, 1942, National Headquarters, Selective Service System	14-15
State Director Advice No. 88 (Oct. 29, 1942)	12

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MAY IT PLEASE THE COURT:

The same arguments made by the Government for the affirmance of the judgment of conviction of the petitioner were urged in the *Smith* and *Estep* cases. All these arguments were rejected by this Court in the *Estep-Smith* decision. (327 U. S. 114-125) The considerations of policy as grounds for denying in criminal proceedings the right to challenge the draft board determinations were held to be insufficient in those cases.

The weakness of the same considerations prevails here. Such policy arguments ought not to be permitted to rob Gibson of his right to attack the administrative action

here, especially when the undisputed evidence showed indisputably that he was attempting, in good faith, to exhaust his administrative remedies by reporting at the camp to make final his acceptance, which this Court held, in the *Falbo* decision, was necessary to be done. There should be no penalty imposed against Gibson by forfeiture of his defense because of the uncertainty of the law. Even all this country's federal judges (except some on this Court who, before the *Estep* decision, had not expressed themselves) did not know then what the law required a registrant to do as a condition precedent to challenging a draft board determination in a criminal case. Falbo was denied his right to challenge the order in his case because he did not go far enough in the administrative process. Gibson did what Falbo did not do. Now the Government, taking a stand inconsistent with that taken in the *Falbo* case as to when the administrative remedies are exhausted, has the audacity to urge the Court to impose a penalty against Gibson for trying to comply with this Court's decision in the *Falbo* case.

There is no difference between the time that the selective process ended when Falbo was ordered to report and when Gibson was ordered to report. Falbo had been accepted upon a final-type (preinduction) physical examination before he was ordered to report. Gibson also had been accepted upon a preinduction physical examination before he was ordered to report. If the selective process had ended when Gibson had undergone the preinduction physical examination it also had ended when Falbo completed the preinduction physical examination. Gibson was attempting to do everything the law required of him except give up the exempt status that the Act provided for ministers of religion. Certainly the law did not require him to give up his ministry (which the Act exempted him to carry on) as a condition precedent to getting judicial review of the illegality of the draft board action. He would have been required to stay

away from his missionary field for months while attempting to get review by *habeas corpus*. His presence at the camp pending the action would have been required. The camp was hundreds of miles away from his field of ministry. He knew that he would have been required to give up his ministry and break his covenant with Jehovah God to preach if he had remained at the camp. He went as far as he possibly could go in an attempt to comply with the law of the land and the suggestions of this Court in the *Falbo* decision when he went to the camp to undergo the physical examination and then left after it was given to him.

Falbo could not have been rejected at the camp had he reported, because there had been no change in his physical condition after his final-type (preinduction) physical examination; and if there had been, he would have been kept in the camp pending instructions from the Director of Selective Service on whether he should be hospitalized.

Gibson could not have been rejected at the camp either. But since this Court held it was necessary for Falbo to report Gibson had every reason to believe that under the substantially identical regulations and circumstances he was required to report in order to completely exhaust his administrative remedies. He should not be penalized now by this Court because he attempted to comply with this Court's decision in the *Falbo* case. If any mistake was made by Gibson in construing the Regulations, it was because of the mistake that this Court made in construing the Regulations when it held that Falbo had not completed the selective process by his failure to report at the civilian public service camp as ordered. It is wrong to punish the petitioner now for doing what easily could have been avoided if this Court had properly interpreted the Regulations in the first place. The predicament in which the Government attempts to place petitioner is the proximate result of this Court's decision in the *Falbo* case and not of the petitioner's desire to violate and flout the law as the Government has wrong-

fully charged him with doing. It is fundamental that one should not be punished for acts proximately and solely caused by another. The decision in the *Falbo* case should be specifically overruled as requested by Dodez in his brief in *Dodez* v. *United States*, No. 86, October Term 1946. The Government has stipulated to a reversal of the judgment of conviction in that case. But that is not enough. Because of the injustice suffered by Gibson and Dodez in both these cases the decision in the *Falbo* case should be overruled by name in order that justice may be done.

There is no difference in the procedure of the selective process in the cases of Falbo, Gibson and Dodez. The pre-induction physical examination followed by acceptance for work of national importance preceding the issuance of the order to report to a civilian public service camp completed the selective process in all three cases. The examination at the camp in all three cases had nothing whatever to do with the selective process which had already been completed before the registrants were ordered to report. The fact that they may thereafter have been discharged from the civilian public service camps had nothing to do with the completion of the selective process or the exhaustion of the administrative remedies.

The Government's argument that orderly procedure required Gibson to remain at the camp, as commanded in the order to report, is of no greater weight than it was in the *Smith* and *Estep* cases. The orders issued by the boards in those cases required them to submit to induction after reporting. They violated the Act as much by refusing to submit as they would have done had they failed to report at all. The duty to remain after reporting is no heavier than the duty to report after having been ordered to report to a civilian public service camp.

The Government argues that silence of the Act required the petitioner to remain at the Camp after reporting as ordered. If silence of the Act did not require Smith and

Estep to submit to induction in their cases, then it cannot be said to require Gibson to submit to the order to report in his case by remaining after reporting, as the orders did not require of Smith and Estep. If the policy argument does not require a registrant who desires to challenge an illegal classification as a conscientious objector to report for work of national importance as a condition precedent to urging such invalidity, then by force of the same reason it does not require the same registrant to remain at the camp after reporting at the civilian public service camp. Departure from the camp after reporting is just as serious a violation of the Act as is failure to report after being ordered, or the failure to proceed to the camp after appearing at the local board as ordered. If a defense is not available in one case, it ought not to be available in the other circumstances. If it is available in one it should be available in the other instances of violations stated above.

The Government's argument which makes the offense of failure to remain at the camp after reporting as ordered more reprehensible than failure to report at the camp is entirely arbitrary. Violations do not stand on different planes under the Act. All violations are prohibited under the Act. All violations are subject to the same penalty under the Act. By singling out the violation in question here for special treatment and placing it on a different plane the Government is reading into the Act something that is not provided for. The Government asks the Court to perform the legislative function rather than the judicial function.

Besides failing to advance cogent legal reasons for denying petitioner the right to challenge the validity of the action of the administrative agency the specious argument of the Government overlooks the inherent proposition that here the challenge is one of lack of jurisdiction or want of authority. The lack of jurisdiction can not be waived by going beyond the end of the selective process. If the local board had no jurisdiction, the camp had no jurisdiction.

The method of challenging the jurisdiction of the agency does not change under the Act by going too far. All violations of the Regulations are violations of the Act. All violations of the Act are prosecuted in the district courts by indictments. As long as administrative remedies have been exhausted the registrant is entitled to challenge the legality of the administrative action regardless of how far he may have gone. Any other construction upon the Act would be unreasonable and discriminatory.

The Government contends that the status of the petitioner changed upon his acceptance at the camp. This may be true. But nevertheless petitioner remained a civilian. He did not lose his rights as a citizen of the United States. He did not change from civilian to military status and thereby lose his rights as a civilian. Petitioner did not become subject to military rules and regulations. There was no court martial in the civilian public service camp. The Director of Selective Service in charge of the camp did not have authority to force petitioner to remain. All that could be done with petitioner under the Act was prosecute him in the federal district court for failure to perform the duty alleged to be imposed upon him by law.

The petitioner was in no higher duty than a mere civilian employee in any department of the Government not subject to military jurisdiction. He has the same rights of defense in the courts as an employee of any other such department who may be prosecuted for violations of his duty. If such employee had no duty in his office to do the thing he was charged with failing to do, he could show his lack of duty in defense to an indictment despite the fact that his status may have changed when he went to work for the department. So also should petitioner be given the right to show that he had no duty to remain at the camp because of the want of authority of the administrative agency to order him to go to the camp in the first place.

The specious argument is advanced by the Government

that since one who changes his status from civilian to that of a military person has available to him as a remedy to question the jurisdiction of the military authority only the writ of *habeas corpus*, so also one who changes from the civilian status of assignee to the civilian status of a campee is confined to the writ of *habeas corpus* as the only means of questioning the jurisdiction of the administrative agency. The mere fact that the civilian public service camp and the Selective Service System have no police jurisdiction or means of taking custody of a violator of the Regulations dispels as inapplicable the Government's argument. There is no analogy between the two.

The Government talks about the new duty petitioner assumed when he waited at the camp for the physical examination. It should be remembered that the new duty was forced upon petitioner. It was illegally imposed upon him by the order of the local board that had no jurisdiction. There being a want of authority, Gibson did not have to stay at the camp as a condition precedent to showing the lack of jurisdiction.

Disruption of orderly process and work at the civilian public service camp by persons who leave after having reported to exhaust their administrative remedies is urged by the Government as its strongest argument for the denial of the defense in this case. The presence of a registrant in the camp who is questioning the jurisdiction of the camp and disrupting the process of the work in the camp while bringing *habeas corpus* proceedings is as great a danger as, if not greater than, the "desertion" of one who reports for the sole purpose of exhaustion of his administrative remedies. What was said on this subject exhaustively by counsel for petitioners in the *Estep* and *Smith* cases it is not necessary here to repeat. Reference is here made to such argument. See Joint Brief for Petitioners in *Smith* v. *United States*, and *Estep* v. *United States*, Nos. 66 and 292, October Term 1945, at pages 73-74.

The side-argument is made by the Government that requiring the petitioner to remain at the conscientious objector camp while determining by *habeas corpus* his status under the Act and Regulations does not impinge petitioner's conscience. This is untrue. The petitioner testified that for him to remain at the camp would be a violation of his covenant. Moreover, in his letter to the camp director he declared likewise. It is utterly ridiculous to assert that a minister of religion exempted under the Act would have no objection while he is required to wait months in the wilderness detached from his congregation while attempting, hundreds of miles from his home, by *habeas corpus* to get released from the camp. Who would be preaching the gospel, burying the dead and marrying the young while the preacher was interned in the conscientious objector concentration camp in the wilderness from which Congress exempted the minister?

The fallacy of the Government's argument that petitioner should remain in the civilian public service camp and apply for the writ of *habeas corpus* as the only remedy is best demonstrated by an illustration or a hypothetical case. The Congress deferred the Vice President of the United States, judges, members of Congress, members of the state legislatures, and governors of the various states. Now, suppose that all the draft boards in the country wanted to usurp their power and break down the operation of the Government. Assume that, to accomplish this, they ordered all the governors and all the members of the state legislatures together with all the judges, members of Congress and the Vice President of the United States to report at civilian public service camps to do work of national importance in the wilderness. Would all these officers of the government have to go to camps and there remain while their status under the Act was being determined by *habeas corpus?* The mere asking of the question resounds the answer: NO. So if Congress did not intend that the deferred

officers of government would not have to submit to such an ordeal and forfeiture, then by force of the same reason it did not intend that the ministers would have to undergo such an outrageously burdensome procedure to protect their rights under the Act.

Petitioner cannot be compelled to resort to the remedy of *habeas corpus* as the only remedy. That statute did not even mention *habeas corpus* as a remedy under the Act. It is a judicial remedy anyway. The law does not make the citizen choose between judicial remedies. The law does, however, compel one to completely exhaust his administrative remedies as a condition precedent to obtaining judicial review of an administrative action. Petitioner did exhaust his administrative remedies. But since *habeas corpus* is not mentioned in the statute as an administrative remedy the petitioner should not be relegated to it and his fundamental right to defend the indictment brought against him be forfeited because he failed to resort to the remedy. It would be very unfair to the Government in a *habeas corpus* proceeding brought by a campee to deny the camp operator the right to challenge the truthfulness of the allegations made in a petition for writ of *habeas corpus*. But yet the Government wants the Court to be unfair to petitioner by denying him the right to challenge the allegations made in the indictment brought by it.

The decision of this Court in *Yakus v. United States*, 321 U. S. 414, is relied upon by the Government to sustain its argument that one must comply with the law until his rights are determined. The *Yakus* decision is inapplicable. There yet remained a clear statutory remedy under the Act by appeal to the Emergency Court and thence to this Court by petition for writ of certiorari which Yakus had not resorted to. There was a clear failure to follow and exhaust statutory remedies. Here no statutory remedy was provided. *Habeas corpus* after reporting at a camp is admittedly not provided for in the Act or Regulations.

The Government advances the novel and alternative ground that, if it and the courts below were wrong in the contention that no defense is available to one who deserts a civilian public service camp, the denial of petitioner's right to challenge the legality of an administrative order was harmless error. It is urged that petitioner has no defense to the indictment because the Government, in passing upon the validity of petitioner's classification and thus reviewing the action of the draft boards, is of the opinion that petitioner cannot show invalidity of the administrative determination. This is the same old argument advanced by the Government and the United States Circuit Court of Appeals in the *Smith* case. In that case they both contended that the denial of the right to make the defense was harmless error because Smith was shown to have attended the University of South Carolina where he was taking an engineering course and devoted only part of his time to the activity of Jehovah's witnesses. *Smith* v. *United States*, 148 F. 2d 288. See the last paragraph of that opinion. See also the Government's brief filed in this Court in *Smith* v. *United States*, No. 66, October Term 1945, which was answered by Smith in his brief filed in this Court in that case. See Joint Brief for Petitioners, pages 190-194.

The argument of the Government in Part III of its brief (pages 39-56) is answered by the opinion of this Court in the *Estep* and *Smith* cases. "We express no opinion on the merits of the defenses which were tendered. Since the petitioners were denied the opportunity to show that their local boards exceeded their jurisdiction, a new trial must be had in each case." (327 U. S. 114, 125) For the same reason it is improper for the Government in this Court to now request the Court to pass upon the merits of Gibson's defense.

It was the duty of the trial court to pass upon the merits of Gibson's defense. The trial court did not do that. It denied Gibson a judicial trial and due process of law. Such

flagrant denial of a judicial trial in ruling out the defense by the trial court cannot be cured by giving petitioner a trial *de novo* here. This Court has no original criminal jurisdiction in this case. It can only review the record made in the trial court. If petitioner was denied a full and fair hearing in the trial court it is the duty of this Court to order a reversal of the judgment and to remand the case to the trial court for a new trial. It cannot give petitioner a trial *de novo* and perform the function that only the district court is authorized to perform.

Since the Government has gratuitously undertaken to discuss the merits of petitioner's defense it is proper and necessary to answer a few of its flagrant inaccuracies before closing this reply brief. Except for a few details that will be discussed hereafter, the entire argument made by the Government about the ministerial status of petitioner was fully discussed by counsel for Smith and Estep in the Joint Brief for Petitioners in *Smith* v. *United States* and *Estep* v. *United States,* Nos. 66 and 292, October Term 1945. See pages 131-190 of that brief, to which reference is here made.

Much emphasis is placed by the Government upon the absence of petitioner's name from the certified official list of Jehovah's witnesses forwarded to State Headquarters by National Headquarters of Selective Service System. To begin with, the requirement made by the Selective Service System that the Watchtower Bible and Tract Society, Inc., file a list of its full-time pioneer ministers with National Headquarters was arbitrary. No other religious organization was required to file a list of its full-time ministers.

The presence or absence or removal of the name of one of Jehovah's witnesses from the list did not justify the local board or the appeal board in denying petitioner's claim for exemption as a minister of religion under the Act. It was the duty of the draft boards to classify each registrant according to the facts appearing in the file irre-

spective of the absence or removal of a name from the list of ministers filed with the National Headquarters.

Shortly after the list was completed in June 1941 it was anticipated that names of other full-time ministers would be added to the certified official list. The Selective Service System promulgated a policy allowing for the addition of names to the list upon application made by the Society supported by affidavits of persons familiar with the background and activity of the person whose name was to be added to the list.

The method of investigating each new individual application of a new full-time pioneer to be added to the list put a heavy burden upon the limited stenographic force and personnel of the section of National Headquarters having charge of the classification of Jehovah's witnesses. Moreover, objections were raised by some local boards that National Headquarters was encroaching upon the original jurisdiction of the local boards in matters of classification by addition of a registrant's name to the list. Accordingly, on October 29, 1942, by State Director Advice No. 88, the Selective Service National Director changed the policy regarding the adding of names to the list, and discontinued the practice of placing new names upon the certified official list.

This Court can take judicial notice of the records of the Selective Service System showing the policy of that agency with respect to Jehovah's witnesses and the arrangements that the Watchtower Society was forced to comply with. The records of the system showed that such Society recognized and certified all of its ministers, including petitioner, whose names were not on that list to be authentic, duly authorized representatives of it, and it recognized all of its ministers, including petitioner, as ministers regardless of whether their names appeared on the list which was under the control of the Selective Service System.

The System required that the Society notify it when

any full-time minister on the list failed to devote his full time each month. The System made it a policy to drop the names of all persons from the list who did not devote their full time to the ministry every month. Accordingly, the Society complied with the regulation and orders of the System in this respect and kept the System periodically advised as to the time devoted by each man whose name appeared on the list.

Therefore in the fall of 1941 when Gibson, because of circumstances over which he declared he had no control that forced him to diminish his quota of time required of the full-time minister, the Society notified the System that Gibson was not making the time required of the full-time ministers. Pursuant to this notice, which was not of the Society's own volition but as a result of the regulations of the System, the System dropped Gibson's name from the list circulated by National Headquarters to State Headquarters. But the Society at no time dropped the name of Gibson from its list of ministers. The credentials which it had theretofore issued to Gibson and which were on file with the draft board were never withdrawn on canceled by the Society.

Inasmuch as his suspension as an active full-time minister for a short period of rehabilitation did not change his status as a minister with the Society it was not necessary to issue new credentials when he resumed his full-time ministerial activity.

When the local board classified him on November 6, 1942, the policy had been changed and it was impossible to have his name again added to the list. Moreover, the removal of his name from the list was several months before he registered with the local board in 1942. At the time his name was absent from the list. However, when Gibson filed his questionnaire and was later classified by the local board the undisputed evidence showed that he had resumed his full-time status as a pioneer missionary evangelist with

the Society. It was the duty of the board to classify him according to his status when he was classified and not when his name was removed from the list. The action of the draft boards and the argument of the Government is directly contrary to the decision of the United States Circuit Court of Appeals for the Seventh Circuit in the case of *United States ex rel. Hull* v. *Stalter,* 151 F. 2d 633. In that case the court held that the absence of Hull's name from the list did not justify the arbitrary denial of the claim for exemption as a minister. The court pointed out that the list had been abandoned at the time he was classified and that the failure to have his name on the list was immaterial.

On November 2, 1942, Opinion No. 14 was amended so as no longer to require that a full-time pioneer missionary evangelist of Jehovah's witnesses have his name upon such certified list. The Opinion provided: "The status of members of the Bethel Family and pioneers whose names do not appear upon such certified official list shall be determined under the provisions of paragraph 5 of this Opinion." Paragraph 5 of the Opinion reads:

"5. The members of Jehovah's Witnesses, known by the various names of members of the Bethel Family, pioneers, regional servants, zone servants, company servants, sound servants, advertising servants, and back-call servants, devote their time and efforts in varying degrees to the dissemination of the tenets and beliefs of Jehovah's Witnesses. The deference paid to these individuals by other members of Jehovah's Witnesses also varies in a great degree. It is impossible to make a general determination with respect to these persons as to their relationship to Jehovah's Witnesses. Whether or not they stand in the same relationship as regular or duly ordained ministers in other religions must be determined in each individual case by the local board, based upon whether or not they devote their lives in the furtherance of the beliefs of Jehovah's Witnesses, whether or not they perform functions which are normally

performed by regular or duly ordained ministers of other religions, and, finally, whether or not they are regarded by other Jehovah's Witnesses in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded."

The failure of one of Jehovah's witnesses to have his name to appear upon the certified official list circulated by the Director of Selective Service to all State Headquarters does not militate against his claim for exemption as a minister of religion. It is the duty of the draft boards to consider the facts as revealed by the registrant's file and to classify him according to the Act and Regulations. If it appears that one of Jehovah's witnesses is actually engaged in regularly preaching the gospel of God's kingdom under the direction of a recognized religious organization, the mere fact that his name does not appear on, or has been removed from, the certified official list of pioneer ministers referred to in Opinion No. 14 does not authorize the board to reject his claim for exemption as a minister of religion. This is the view taken by the Government in its brief filed in *Benesch* v. *Underwood* (CCA-6) 132 F. 2d 430. There the Government informed the court that "the inclusion of Benesch's name on the list of 'pioneers' maintained at National Headquarters would not, *ipso facto*, entitle him to classification as a minister; neither could it be made a prerequisite to such classification. The inclusion of a name on the list is, at the most, evidence which may be considered by the local board in classifying the registrant. If it were otherwise, the officials at National Headquarters would be usurping the function which Congress delegated solely to the local boards."

In a letter from General Hershey, National Director of Selective Service, dated July 7, 1943, concerning the certified official list, he said, *inter alia*, "The official list of Jehovah's Witnesses is no more than information from National Headquarters as to those members, who within

the limited concept of religious organization, are recognized by the Watchtower Bible and Tract Society as ministers."

While inclusion of the name of the list may be considered by the draft boards in classifying a registrant, the absence of or removal of a person's name from the list is not made the conclusive and exclusive test. The list was established and is maintained as a convenience by the Selective Service System and the Watchtower Society in taking appeals and other administrative action. It was never considered by the Selective Service System and the Watchtower Society to exclude from consideration by boards the exemption claim of other persons whose names did not appear on such list.

It is plain that the right of Jehovah's witnesses to classification as ministers of religion under the Act and Regulations is not confined to those whose names appear upon the certified official list circuited by National Headquarters to the various State Headquarters of the System. Indeed, the Opinion extends to full-time ministers of Jehovah's witnesses whose names do not appear on or have been removed from the certified official list. Accordingly the action of the Society in notifying the System that Gibson was not putting in full time as a pioneer minister pursuant to the orders of the System which resulted in his name being dropped from the list does not justify the action of the draft boards. Moreover, it does not result in a waiver of the denial of due process of law denied petitioner by the trial court in this case. The action of the System in dropping petitioner's name from the list did not make harmless the error of the district court in denying petitioner a judicial trial.

At no time did the Society inform the State or National Headquarters that Gibson was no longer recognized as a minister by it. The records show without dispute that the Society at all times recognized him as a minister. Furthermore, it shows beyond dispute that from the time of his registration, classification and appeal to the time of his

order to report for work of national importance he was at all times recognized as a minister by the Society and that his full time was devoted to such work.

The Government unjustly charges petitioner with falsification of the records by stating in his Questionnaire that he was ordained in 1938 and by stating in his Occupational Questionnaire that he had been ordained in 1940. This accusation by the Government is wholly unjustified because it is obvious that in the Selective Service Questionnaire he was stating about the time of his formal ordination ceremony which was on September 9, 1938. In the Occupational Questionnaire Gibson was showing the agency that he had been acting as a full time pioneer missionary evangelist since 1940. There was no inconsistency.

It is remarkable that the Department of Justice for the first time in this Court accuses petitioner of falsification. He was not charged with such in the courts below. Moreover, the statement by the Government that the draft boards were justified in rejecting his claim for exemption as a minister because of his alleged falsification is misleading to say the least. It should be observed that the draft boards and the State and National Headquarters of the System never at any time accused the petitioner of falsification. Indeed the draft boards did not deny his claim for exemption because of an alleged false statement but solely because his name did not appear upon the certified official list. This denial made on this basis is clearly arbitrary and capricious. It cannot be whitewashed by a belated charge of lying made by the Government.

It is difficult, if not impossible, to reconcile the attitude of the Government as to the ministerial status of petitioner in this case with its attitude shown toward the claim of Dodez to exemption as a minister in the companion case. The facts in respect to their ministerial status and activity are almost identical in every respect. In the *Dodez* case the Government says that "there lurks in this case a close

question concerning the factual foundation upon which the board's classification" was made. (See Government's brief, page 16, *Dodez* v. *United States*, No. 86, October Term 1946.)

Gibson was born in September 1922. Dodez was born in September 1922. Gibson registered on June 30, 1942. Dodez registered on June 30, 1942. Gibson was classified on November 6, 1942. Dodez was classified on October 26, 1942. Gibson had formerly been a farmer until 1940 when he undertook the full-time pioneer missionary evangelistic work for the Society. Dodez had formerly been a farmer until 1942 when he undertook the full-time pioneer *missionary evangelistic* work for the Society. Gibson, except for a brief period of suspension, had engaged in the full-time pioneer missionary work for about two years before Dodez entered such work. Gibson filed with his draft board a sworn certificate issued by the Society in July, 1941, that he was a duly ordained and fully recognized minister. (Exhibit 29) Dodez filed with his draft board the identical certificate issued by the same Society in September, 1942. (Record p. 157) Gibson became a full-time pioneer minister almost two years before he filed his Questionnaire. Dodez became a full-time pioneer minister a little over two months before he filed his Questionnaire. Gibson's name was dropped from the list. The National Headquarters refused to add Dodez' name to the list. Gibson continued to act as a full-time pioneer minister from the date of his registration under the Act to the time of his being ordered to report. Dodez continued to act as a full-time pioneer minister from the date of his registration under the Act to the time of his being ordered to report. Both Gibson and Dodez have continued to act as full-time fully recognized missionary evangelists and ministers of the Society and of Jehovah's witnesses since their prosecution under the Act to this date. Both men occupy and have occupied the same status with the Society and Jehovah's witnesses in the preaching work done by the organization.

Gibson here and now adopts the language of the Government used in its brief filed in the *Dodez* case as his suggestion to the Court as to what should be done: "If a new trial is had petitioner will have an opportunity to present squarely the question whether there is any foundation in the facts before the selective service boards for rejecting his claim to classification as a minister, in accordance with the standard of judicial review set forth in the *Estep* case." (Government's brief in *Dodez* case, pp. 16-17)

Conclusion

Petitioner respectfully submits that for the reasons above stated, and for the reasons disclosed in his main brief filed in this case, the judgment of the circuit court of appeals should be reversed and the case should be remanded to the district court for further proceedings not inconsistent with the opinion of the Court that may be written herein.

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